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as Trustee of the Circuit City Stores, Inc. Liquidating
Trust*

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

In re

CIRCUIT CITY STORES, INC., *et al.*,

Debtors.¹

ALFRED H. SIEGEL, solely as Trustee of the
Circuit City Stores, Inc. Liquidating Trust, and
not in any individual or other capacity,

Plaintiff,

v.

SAFECO INSURANCE COMPANY OF
AMERICA,

Defendant

Case No. 08-35653 (KRH)

Chapter 11

(Jointly Administered)

Adv. No. 17-03042 (KRH)

¹ The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: Circuit City Stores, Inc. (3875), Circuit City Stores West Coast, Inc. (0785), InterTAN, Inc. (0875), Ventoux International, Inc. (1838), Circuit City Purchasing Company, LLC (5170), CC Aviation, LLC (0841), CC Distribution Company of Virginia, Inc. (2821), Circuit City Properties, LLC (3353), Kinzer Technology, LLC (2157), Abbott Advertising Agency, Inc. (4659), Patapsco Designs, Inc. (6796), Sky Venture Corp. (0311), PRAHS, Inc. (n/a), XSStuff, LLC (9263), Mayland MN, LLC (6116), Courchevel, LLC (n/a), Orbyx Electronics, LLC (3360), and Circuit City Stores PR, LLC (5512).

SAFECO INSURANCE COMPANY OF
AMERICA,

Counter-Plaintiff/Third Party
Plaintiff,

v.

ALFRED H. SIEGEL,

Counter-Defendant;

and

ALLEGHENY POWER, *et al.*,

Third-party Defendants.

STIPULATION OF VOLUNTARY DISMISSAL

Comes now Alfred H. Siegel, Trustee (the “Trustee”) of the Circuit City Stores, Inc. Liquidating Trust in the above referenced adversary proceeding, by counsel, and together with Safeco (hereinafter defined), by counsel, and Customs (hereinafter defined), by counsel, (collectively, the “Remaining Active Parties”), and pursuant to Federal Rules of Bankruptcy Procedure 7041 and Federal Rule of Civil Procedure 41, moves to dismiss with prejudice all remaining counts, whether by complaint, counter claim, cross claim, or otherwise, except as specifically set forth below. As evidenced by the endorsements of counsel hereto, the Remaining Active Parties consent to the dismissal provided for herein and for the Clerk to take all necessary actions to close this adversary proceeding:

BACKGROUND

1. WHEREAS, on February 17, 2017, the Trustee, through counsel, filed his Complaint against Safeco Insurance Company of America (“Safeco”). (ECF No. 1).

2. WHEREAS, on March 23, 2017, Safeco filed its Notice and Motion to Dismiss Adversary Proceeding (the “Safeco Motion to Dismiss”). (ECF No. 9).

3. WHEREAS, on May 4, 2017, this Court denied the Safeco Motion to Dismiss. (ECF No. 17).

4. WHEREAS, on May 18, 2017, Safeco filed its Answer to Complaint, its Counterclaim Against the Trustee, and its Third-Party Complaint against numerous third-party defendants, including the United States of America, Customs and Border Protection (“Customs”). (ECF Nos. 21-23).

5. WHEREAS, on May 30, 2017, Safeco filed its Amended Counterclaim (together with the Counterclaim against the Trustee, the “Counterclaim”). (ECF Nos. 27 and 28).

6. WHEREAS, on June 23, 2017, the Trustee, through counsel, filed his Amended Complaint against Safeco. (ECF No. 39).

7. WHEREAS, on June 26, 2017, Safeco filed its Second Amended Counterclaim and Third-Party Complaint. (ECF Nos. 45 and 46).

8. WHEREAS, on June 27, 2017, Customs filed its Motion to Dismiss Adversary Proceeding (the “Customs Motion to Dismiss”). (ECF No. 48).

9. WHEREAS, on July 14, 2017, Safeco filed its Third Amended Counterclaim and Third-Party Complaint. (ECF Nos. 50 and 51).

10. WHEREAS, on August 22, 2017, Safeco filed its Motion for Entry of Default against Third Party Defendants Entergy Louisiana, LLC f/k/a Louisiana Power & Light Company; Entergy New Orleans, Inc. f/k/a New Orleans Public Service, Inc.; State of Florida, Florida Department of Financial Services; State of Massachusetts, Massachusetts Department of Transportation f/k/a Massachusetts Turnpike Authority; Kentucky Utilities Company; City of Rocky Mount; Southwestern Electric Power Company; Entergy Mississippi, Inc.; Entergy Louisiana, LLC f/k/a Entergy Gulf States Louisiana, LLC; South Carolina Public Service Authority (Santee Cooper); The City of East Point, Georgia; State of Arizona, Registrar of Contractors; State of Arizona, Department of Revenue; Frederick County, Maryland; State of Maryland; State of New Mexico Regulation and Licensing Department, Construction Industries Division; State of Delaware; Dixie Electric Cooperative; Utilities Board of the City of Foley Alabama d/b/a Riviera Utilities; New York State Electric and Gas Corporation; The Potomac Edison Company d/b/a Allegheny Power; and Monongahela Power Company d/b/a Allegheny Power (together, the “Default Parties”). (ECF No. 57).

11. WHEREAS, on August 22, 2017, Safeco also filed its Notice of Dismissal Without Prejudice as to Third-Party Defendants Arizona Public Service Company; Public Service Company of Oklahoma d/b/a AEP/Public Service Company of Oklahoma; City of Lakeland, Florida; City of Orlando, Orlando Utilities Commission; Consolidated Edison Company of New York; Dominion Virginia Power; Entergy Arkansas, Inc.; Entergy Texas, Inc., f/k/a Entergy Gulf States, Inc.; Gulf Power Company; Hillsborough County; Westar Energy, Inc. f/k/a Kansas City Power & Light Company; Kissimmee Utility Authority; Lee County Electric Cooperative, Inc.; New York State Thruway Authority; Pennsylvania Turnpike Commission; State of New York, New York Department of State; Salt River Project Agricultural Improvement

and Power District; State of Minnesota; State of Nevada; State of Oklahoma, Oklahoma Tax Commission; Tampa Electric Company; TECO Peoples Gas; Atmos Energy Corporation f/k/a United Cities Gas Company; Westar Energy, Inc. f/k/a Western Resources, Inc.; and Withlacoochee River Electric Cooperative, Inc.. (ECF No. 58).

12. WHEREAS, on August 23, 2017, the State of California Department of Consumer Affairs and Contractors State License Board filed its Answer to Third-Party Complaint. (ECF No. 59).

13. WHEREAS, on August 28, 2017, the Clerk of the Court entered Default against the Default Parties. (ECF Nos. 60-85).

14. WHEREAS, on August 29, 2017, Safeco moved for Default Judgment against the Default Parties. (ECF No. 86).

15. WHEREAS, on September 18, 2017, Customs filed its Motion to Dismiss Pleading and Memorandum in Support Thereof as to the Third-Party Complaint. (ECF No. 89)

16. WHEREAS, on September 25, 2017, the Order Granting Motion for Default Judgment was entered against the Default Parties except for the Utilities Board of the City of Foley Alabama. (ECF No. 92).²

17. WHEREAS, on October 25, 2017, the Trustee and Safeco filed their Objection to the Customs Motion to the Dismiss (the “Objection”). (ECF No. 94).

18. WHEREAS, on November 8, 2017, Customs filed its Reply to the Objection. (ECF No. 96).

² The Motion for Default Judgment was withdrawn with respect to Third Party Defendant Utilities Board of the City of the City of Foley Alabama. See Order of Default Judgment at 9 (Sept. 25, 2017), ECF No. 92.

19. WHEREAS, on November 15, 2017, this Court denied the Customs Motion to Dismiss. (ECF No. 97).

20. Whereas on November 28, 2017, the Court entered the Order of Dismissal as to Certain Third-Party Defendants. (ECF No. 98).

21. WHEREAS, on December 19, 2017, a Consent Judgment Order as to the State of California Department of Consumer Affairs and Contractors State License Board was entered by this Court. (ECF No. 102).

22. WHEREAS, on December 21, 2017, Customs filed its Answer.

23. WHEREAS, Third-Party Defendant Puerto Rico Electric Power Authority (“PREPA”) was never served with process and has not made an appearance in this proceeding.

24. WHEREAS, the only remaining parties are the Trustee, Safeco, Customs, and PREPA.

STIPULATION

A. Pursuant to Federal Rule of Bankruptcy Procedure 7041 and Federal Rule of Civil Procedure 41, the Remaining Active Parties having consensually resolved the matters raised herein, hereby move to dismiss with prejudice the complaint, the counter claims, the third-party complaint, and any and all other remaining claims or causes of action herein, except as specifically set forth below, with each party to bear its own costs, expenses and attorneys’ fees.

B. Pursuant to Federal Rule of Bankruptcy Procedure 7041 and Federal Rule of Civil Procedure 41(a)(1)(A)(i) & -(c)(1), Safeco hereby stipulates to the dismissal of Count II of the Third Amended Third-Party Complaint with respect to PREPA without prejudice.

C. As evidenced by the endorsement hereto, the Remaining Active Parties consent to the dismissal provided for herein and for the Clerk to take all necessary action to close this adversary proceeding.

SO ORDERED:

Dated: Mar 14 2018
Richmond, Virginia

/s/ Kevin R Huennekens

HONORABLE KEVIN R. HUENNEKENS
UNITED STATES BANKRUPTCY JUDGE

SO STIPULATED:

Entered on Docket:3/14/18

TAVENNER & BERAN, PLC

/s/ Lynn L. Tavenner

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Counsel for the Plaintiff Alfred Siegel, solely in his capacity as Trustee of the Circuit City Stores, Inc. Liquidating Trust

SO STIPULATED:

UNITED STATES OF AMERICA
CUSTOMS AND BORDER PROTECTION

/s/ Robert P. McIntosh

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SO STIPULATED:

SAFECO INSURANCE COMPANY OF AMERICA

/s/ Thomas J. Moran

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Counsel for Safeco Insurance Company of America

CERTIFICATE OF SERVICE

I hereby certify that on or before the 8th day of March 2018, a copy of the foregoing was served on all necessary parties.

/s/ Lynn L. Tavenner

Counsel

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